

105TH CONGRESS
1ST SESSION

H. R. 252

To amend the Black Lung Benefits Act to provide for more just procedures
for certain claims due to pneumoconiosis.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 7, 1997

Mr. RAHALL introduced the following bill; which was referred to the
Committee on Education and the Workforce

A BILL

To amend the Black Lung Benefits Act to provide for more
just procedures for certain claims due to pneumoconiosis.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Black Lung Benefits
5 Act Amendments of 1997”.

6 **SEC. 2. CLAIMS PROCEDURE.**

7 The Black Lung Benefits Act is amended by adding
8 at the end the following new part:

1 **“PART D—SPECIAL PROVISIONS**

2 **“SEC. 441. CLAIMS.**

3 “(a) STANDARD.—If a claim is filed after the date
4 of the enactment of this section under part C for death
5 or total disability of a miner due to pneumoconiosis, such
6 miner shall be presumed to have been totally disabled by
7 pneumoconiosis or to have died because of pneumoconiosis
8 if the conditions described in any one of the following
9 paragraphs are met:

10 “(1) A single positive chest roentgenogram (x-
11 ray), biopsy, or autopsy of such miner indicates the
12 existence of pneumoconiosis.

13 “(2) A single set of ventilatory studies of such
14 miner indicates the presence of a chronic respiratory
15 or pulmonary disease that meets or exceeds the se-
16 verity standards of regulations of the Secretary of
17 Health and Human Services published at 20 C.F.R.
18 410.490(b)(1)(ii).

19 “(3) A single set of blood gas studies of such
20 miner indicates the presence of an impairment in the
21 transfer of oxygen from the lungs to the blood that
22 meets or exceeds the severity standards of regula-
23 tions of the Secretary of Labor published at 20
24 C.F.R. 727.203(a)(3).

1 “(4) Other medical evidence involving such
2 miner, including the documented opinion of a physi-
3 cian exercising reasonable medical judgment, indi-
4 cates the presence of a respiratory disease or pul-
5 monary impairment that would prevent the miner
6 from performing his usual coal mine work.

7 The person who submits such claim shall not be required
8 to prove the matters described in paragraph (1), (2), (3),
9 or (4) by a preponderance of the evidence or by any higher
10 evidentiary standard.

11 “(b) CAUSATION.—

12 “(1) If a claim is filed after the date of the en-
13 actment of this section under part C for death or
14 total disability due to pneumoconiosis and if the
15 miner with respect to whom the claim was filed
16 worked 10 or more years in a coal mine and pre-
17 sents evidence which proves the evidence of the mat-
18 ter described in any paragraph of subsection (a),
19 there shall be a rebuttable presumption that the
20 miner’s pneumoconiosis arose out of the miner’s coal
21 mine employment. No evidence shall be excluded in
22 determining the length of a miner’s coal mine em-
23 ployment. In the absence of complete Social Security
24 Administration records, affidavits from the miner’s

1 coworkers shall be accepted as sufficient proof of the
2 coal miner's period of employment.

3 “(2) If a miner is unable to prove 10 years of
4 employment in a coal mine, the miner may prove
5 that the miner's pneumoconiosis is due to the min-
6 er's coal mine employment through other evidence.

7 “(c) REBUTTAL OF PRESUMPTION.—

8 “(1) The presumption under subsection (a) that
9 a miner is totally disabled by pneumoconiosis may be
10 rebutted only if—

11 “(A) there is evidence that establishes that
12 the claimant is in fact doing the claimant's
13 usual coal mine work, or

14 “(B) in light of all relevant evidence, it is
15 established that the miner is able to do the
16 miner's usual coal mine work or comparable
17 and gainful work.

18 A physician's opinion that the miner is not totally
19 disabled shall not rebut such presumption when in-
20 voked by qualifying ventilatory studies or arterial
21 blood gas testing.

22 “(2) In connection with a rebuttal of a pre-
23 sumption under subsection (a), the Secretary of
24 Labor may submit not more than one opinion from
25 an examining or consulting physician and not more

1 than three x-ray readings to supplement such evi-
2 dence.

3 “(3) The presumption under subsection (b) may
4 be rebutted only by clear and convincing proof that
5 the miner’s pneumoconiosis, established by a condi-
6 tion described in subsection (a), did not arise, in
7 whole or in part, out of the miner’s coal mine em-
8 ployment.

9 **“SEC. 442. APPLICATION OF SECTION 441.**

10 (a) IN GENERAL.—Section 441 shall apply to all
11 claims filed under part C on and after the date of the
12 enactment of this Act, except that the Secretary of Labor
13 shall review any claim that—

14 “(1) was filed under part B or part C, and

15 “(2) is either pending on the date of enactment
16 of this Act or has been denied on or before such
17 date,

18 to determine if the evidence establishes eligibility under
19 the presumption of section 441(a). The Secretary shall re-
20 view each such claim regardless of whether the claimant
21 also filed any subsequent claim under part B or C or such
22 claim resulted in an award of benefits. The Secretary’s
23 review of a claim which resulted in the award of benefits
24 may not result in the reversal or forfeiture of such bene-
25 fits. The Secretary shall promptly notify each claimant

1 having a claim subject to review under this subsection that
2 the claim shall be reviewed by the Secretary in accordance
3 with this subsection.

4 “(b) PROCEDURE.—

5 “(1) In carrying out the review of a claim
6 under subsection (a), the Secretary shall not allow
7 the claimant or any other party to submit additional
8 medical or other evidence if the Secretary deter-
9 mines that the evidence on file meets the criteria of
10 eligibility set forth in section 441(a). If the Sec-
11 retary determines that the evidence on file does not
12 meet the criteria of eligibility set forth in section
13 441(a), the Secretary shall provide an opportunity
14 for the claimant to present additional medical or
15 other evidence to substantiate the claimant’s claim
16 under such criteria and shall notify the claimant of
17 that opportunity. The Secretary shall not be per-
18 mitted to supplement the evidence in any claim re-
19 viewed under subsection (a). Each claim reviewed
20 under this section shall be afforded the administra-
21 tive and judicial review that is afforded claims that
22 are not subject to this section.

23 “(2) If a claim is determined under subsection
24 (a) to meet the eligibility requirements of section

1 441(a), the individual for which the claim was sub-
2 mitted shall be awarded benefits prospectively (un-
3 less, at the time of such determination, the individ-
4 ual is receiving black lung benefits prospectively pur-
5 suant to an award made in connection with a sepa-
6 rate claim) and retroactively for any period begin-
7 ning on or after January 1, 1974, for which the
8 claimant—

9 “(A) has not received benefits, and

10 “(B) is eligible under the statutory and
11 regulatory provisions governing the retroactive
12 payment of benefits for claims that are not sub-
13 ject to the special review required by subsection
14 (a).

15 **“SEC. 443. PAYMENT OF BENEFITS.**

16 “Benefits payable under any claim which is deter-
17 mined under section 441 or 442 to be eligible for benefits
18 shall be paid from the fund.

19 **“SEC. 444. JUDICIAL REVIEW.**

20 “A claimant who files a claim after the date of enact-
21 ment of this Act and whose claim is denied by the Depart-
22 ment of Labor’s Benefits Review Board pursuant to the
23 procedure of section 21(b) of the Longshore and Harbor
24 Workers’ Compensation Act (33 U.S.C. 921(b)), may peti-
25 tion for review in the United States District Court for the

1 district in which the claimant last worked as a coal miner
2 or where the claimant resides at the time the appeal is
3 filed, whichever the claimant chooses. Section 205(g) of
4 the Social Security Act (42 U.S.C. 405(g)) shall govern
5 all such petitions for review, except that

6 “(1) each reference therein to the Secretary
7 shall be interpreted as meaning the Secretary of
8 Labor, and

9 “(2) if the claim was denied because of the ap-
10 plication of a regulation which violates this Act or
11 any other Federal law, the period in which a claim-
12 ant may petition for review shall not apply. A peti-
13 tion for review under this section may not be denied
14 because the claimant has not exhausted the adminis-
15 trative remedies available to the claimant.

16 **“SEC. 445. SURVIVORS AND DEPENDENTS.**

17 “(a) IN GENERAL.—The Secretary shall award the
18 survivor or dependent of a deceased miner benefits under
19 a claim under part C if the conditions in any one of the
20 following paragraphs are met:

21 “(1) The deceased miner worked 25 years or
22 more in one or more coal mines.

23 “(2) The miner’s death was due in whole or in
24 part to pneumoconiosis.

1 “(3) The miner was receiving benefits for
2 pneumoconiosis at the time of the miner’s death.

3 “(4) The miner had a claim for benefits for
4 pneumoconiosis pending at the time of the miner’s
5 death—

6 “(A) in which the existing medical evidence
7 or such evidence combined with any additional
8 medical evidence submitted by survivors or de-
9 pendents demonstrates a level of impairment
10 sufficient to qualify for benefits under section
11 441(a), or

12 “(B) in which the medical evidence was not
13 sufficient to qualify for benefits under section
14 441(a) but lay evidence (i) demonstrates by a
15 preponderance of the evidence the existence of
16 a respiratory disease or pulmonary impairment
17 that would prevent the miner from performing
18 the miner’s usual coal mine work, and (ii) such
19 disease or impairment is established in accord-
20 ance with section 441(b)(2) as resulting from
21 the miner’s coal mine work.

22 “(b) DEFINITION.—For purposes of this section, sur-
23 vivors and dependents are those individuals who filed
24 claims under part C after the date of enactment of this

1 Act or whose claims under part B or C are eligible for
2 review under section 442.

3 **“SEC. 446. GENERAL PROVISIONS.**

4 “(a) MULTIPLE CLAIMS.—If a claimant has had a
5 claim denied under this Act, the Secretary shall permit
6 the claimant to file an additional claim under this part
7 without a showing of a material change in the claim. Such
8 an additional claim shall be considered de novo on the
9 merits.

10 “(b) APPEALS BY THE SECRETARY.—The Secretary
11 may not file an appeal from a decision of the Deputy Com-
12 missioner, the Office of Administrative Law Judges, the
13 Benefits Review Board, or a district court of the United
14 States with respect to a claim under this part which is
15 adverse to the Secretary.

16 “(c) REOPENING CLAIMS.—No claim under this part
17 under which the claimant was awarded benefits and with
18 respect to which no appeal is pending may be reopened
19 by the Secretary unless the Secretary offers reasonable
20 evidence to suspect fraud in connection with the adjudica-
21 tion of the claim.”.

22 **SEC. 3. CONFORMING AMENDMENT.**

23 Section 224(a)(2)(B) of the Social Security Act (42
24 U.S.C. 424a(a)(2)(B)) is amended by striking out “and
25 (iv)” and inserting in lieu thereof “(iv)” and by inserting

1 at the end the following: “and (v) benefits payable under
2 the Black Lung Benefits Act,”.

3 **SEC. 4. BENEFIT REPAYMENTS.**

4 Part C of the Black Lung Benefits Act is amended
5 by adding at the end the following:

6 “SEC. 436. (a) In the administration of the benefits
7 payable under this part, if a claimant receives benefits
8 under this part under a claim but before final adjudication
9 of the claim for benefits is made and if the final adjudica-
10 tion is that the claimant is ineligible for benefits, the pay-
11 ment of such benefits to the claimant shall not be consid-
12 ered an overpayment of benefits and the claimant shall
13 not be legally responsible for the return of such benefits.

14 “(b) If, before the date of the enactment of this sec-
15 tion, a claimant received benefits under this part under
16 a claim but before a final adjudication of the claim for
17 benefits was made, the claimant will not be required to
18 repay such benefits. If, before the date of the enactment
19 of this section, a claimant who received benefits under this
20 part under a claim but before final adjudication of the
21 claim for benefits was made was required under regula-
22 tions of the Secretary to repay the benefits as an overpay-
23 ment of benefits, the Secretary shall refund to the claim-
24 ant the amount repaid by the claimant.”.

1 **SEC. 5. WIDOW'S BENEFITS.**

2 (a) IN GENERAL.—In the administration of the Black
3 Lung Benefits Act—

4 (1) a widow of a miner who received or is re-
5 ceiving benefits under that Act shall not be disquali-
6 fied to receive such benefits if the widow remarries,
7 and

8 (2) a widow of a miner shall be entitled to re-
9 ceive such benefits without regard to the length of
10 time the widow was married to the miner.

11 Any regulations of the Secretary of Labor which disqualify
12 a widow described in paragraph (1) or impose a minimum
13 marriage period as described in paragraph (2) shall on
14 and after the date of the enactment of this Act have no
15 legal effect.

16 (b) APPLICATIONS.—Any widow who on the date of
17 the enactment of this Act is entitled to receive benefits
18 under the Black Lung Benefits Act because of subsection
19 (a) shall file a claim for such benefits within 3 years of
20 the date of the enactment of this Act.

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